

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPACE AGE ALARMS, INC.,

Plaintiff,

- against -

THE BOARD OF EDUCATION OF THE WHITE
PLAINS CITY SCHOOL DISTRICT, MICHAEL J.
LYNCH AND ALARM SPECIALISTS, INC.

Defendants.

Case No.:

07-CV-7606 (CLB)(MDF)

AFFIRMATION OF
MICHAEL G. McALVIN

MICHAEL G. McALVIN, an attorney duly licensed to practice law before the courts of this state and district, affirms the following under penalty of perjury:

1. I am associated with the firm of Ingerman Smith, LLP, attorneys for the Defendants, the Board of Education of the White Plains City School District (hereinafter "School District") and Michael J. Lynch. I am fully familiar with the facts and circumstances of this action.

2. I respectfully submit this affirmation in support of the Motion to Dismiss by School District and Michael J. Lynch which seeks an order dismissing the causes of action against the School District on the grounds that: (1) Plaintiff has failed to comply with the Notice of Claim requirements of Section 3218 of the New York State Education Law; (2) Plaintiff failed to state a claim upon which relief can be granted; and (3) in the event the federal claims are dismissed and

any state law claims remain, he Court should decline to exercise jurisdiction of those state law claims.

3. This Court is respectfully referred to the details explained in the Affidavit of Fred Seiler, the Assistant Superintendent of Business, the accompanying memorandum of law and annexed exhibits by which Defendants supports its Motion to Dismiss.

4. A copy of Plaintiff's Verified Complaint is annexed hereto.

5. A copy of World Religious Relief v. Sirius Satellite Radio, Inc., No. 05-CV-8257, 2007 WL 2261549 (S.D.N.Y. Aug. 7, 2007) is annexed hereto.

6. As Defendants School District and Michael Lynch have moved under Rule 12 to dismiss Plaintiff's Verified Complaint, no other responsive pleading is required at this time. See Rule 12(b)(4) of the Federal Rules of Civil Procedure. Nevertheless, Defendants do assert the following affirmative defenses:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The within claims are barred because Plaintiff failed to serve a notice of claim upon the School District.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The within claims are barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims fail to state a cause of action against the Defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks recovery in contract, Plaintiff materially breached the terms and conditions of said agreement and is, therefore, not entitled to the relief demanded.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Defendants have complied with their contractual obligations to Plaintiff. Hence, any alleged damages suffered by Plaintiff are unrelated to the Defendants' performance of their obligations under the contract.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages were caused by Plaintiff in the matters alleged in the Verified Complaint herein.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's damages were proximately caused by Plaintiff's contributory fault and negligence in the matters alleged in the Complaint herein.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

The damages suffered by Plaintiff, if any, are the result of the negligence of Plaintiff and Plaintiff's failure to use reasonable diligence in performing the acts required of Plaintiff.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Verified Complaint fails to plead with sufficient particularity any facts or details to give the Court and Defendants, notice of transactions, occurrences, or

series of occurrences or transactions, intended to proven and the material elements of each cause of action as required by the Federal Rules.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

Defendants, all times complained of acted solely pursuant to their duties and responsibilities and in particular Michael Lynch as the Director of Facilities and Operations.

Defendants, at all times complained of, acted in good faith in that they reasonably believed that they were exercising and acting within their statutory and constitutional powers.

That in performing such duties and responsibilities, Defendants are and were protected by absolute and/or qualified Federal and/or State immunities.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

The Verified Complaint fails to set forth facts sufficient to constitute a deprivation of any Constitutional rights or other basis for a claim under 42 U.S.C. §1983 or any other civil rights claims.

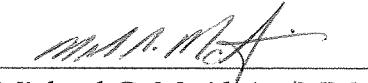
There is no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by Defendants or otherwise ratified by Defendants which authorized a deprivation of Plaintiff's Constitutional rights.

There is no custom or usage adopted, followed, endorsed, or ratified by Defendants which authorized a deprivation of Plaintiff's Constitutional rights.

7. No prior application has been made for the relief sought herein.

WHEREFORE, it is respectfully requested that this Court issue an Order dismissing the Complaint, and for such other and further relief as this Court deems just and proper.

Dated: Hauppauge, New York
October 23, 2007

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